

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

RABBI DAVID SLOMOVITZ, NATHAN FRANKEL, EDWARD HANDLER, SAMUEL LANDY, MIRIAM LEVITZ, HARRY LIEBER, DAVID REICH, ABRAHAM TAUBER, and MORRIS WALDMAN,

Plaintiffs,

v.

THE ENCLAVE AT FAIRWAYS HOMEOWNERS ASSOCIATION, INC., a New Jersey Domestic Corporation,

Defendant.

Civil No. 3:18-cv-16910

CONSENT ORDER

THIS MATTER having been brought before the Court on the Complaint of Plaintiffs, RABBI DAVID SLOMOVITZ, NATHAN FRANKEL, EDWARD HANDLER, SAMUEL LANDY, MIRIAM LEVITZ, HARRY LIEBER, DAVID REICH, ABRAHAM TAUBER, and MORRIS WALDMAN against the Defendant, THE ENCLAVE AT FAIRWAYS HOMEOWNERS ASSOCIATION, INC. pursuant to the provisions of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.* (“FHA”), 42 U.S.C. § 1982, the New Jersey Constitution’s protection of religious exercise, the New Jersey Law Against Discrimination (“LAD”), and the Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. 45:22a-21, *et seq.* (“PREFDA”), to redress violations of their civil rights by the Defendant; and

WHEREAS Plaintiffs are all owners in fee simple of real property located in the Enclave at Fairways community in Lakewood, New Jersey; and

WHEREAS the Defendant is the homeowners’ association organized pursuant to the laws

of the State of New Jersey for the Enclave at Fairways community located in Lakewood, New Jersey; and

WHEREAS on December 6, 2018, Plaintiffs filed a multi-count complaint against the Defendant in this Court alleging violations of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.* (“FHA”), 42 U.S.C. § 1982, the New Jersey Constitution’s protection of religious exercise, the New Jersey Law Against Discrimination (“LAD”), and the Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. 45:22a-21, *et seq.* (“PREFDA”) and a Motion for a Temporary Restraining Order seeking certain relief; and

WHEREAS on December 12, 2018, the parties appeared before the Court with respect to the Plaintiffs’ Motion for a Temporary Restraining Order; and

WHEREAS, Defendant denies all liability for the claims asserted by Plaintiffs; and

WHEREAS, the Parties desire to resolve the Action without further litigation and to settle, fully and finally, any and all claims among them; and

WHEREAS, this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1331, 1343(3), (4), and 42 U.S.C. § 3613(a), *et seq.* and over Plaintiffs’ request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202; and

WHEREAS, this Court has supplemental jurisdiction over all state law claims under 28 U.S.C. § 1337(a); and

WHEREAS, this Court has personal jurisdiction over Defendant; and

WHEREAS, venue is proper in this District;

6/11
IT IS on this 1st this day of February 2019, **ORDERED, ADJUDGED** and **DECREED** as follows:

1. The Defendant, THE ENCLAVE AT THE FAIRWAYS HOMEOWNERS ASSOCIATION, INC., shall permanently unlock and leave open the Damiano Way pedestrian gate as follows:

- a. On Fridays, from one (1) hour before sunset until 12:00 a.m. midnight.
- b. On Saturdays, from 4:00 a.m. until two (2) hours after sunset.
- c. Except as set forth in sub-section (d) immediately below, on Jewish Holy Days from one (1) hour before sunset until 12:00 a.m. midnight on the day prior to the first day of the holiday, from 4:00 a.m. until 12:00 a.m. midnight on the first day of the holiday, and from 4:00 a.m. until (2) hours after sunset on the final day of the holiday. If the day prior to the first day of the holiday is a Saturday, then regular Saturday hours as outlined in (b) shall control, and the rest of the holiday will adhere to the Holy Days schedule as outlined herein. If the second day of the holiday is a Saturday, then regular Saturday hours as outlined in (b) shall control, and the rest of the holiday will adhere to the Holy Days schedule as outlined herein. On Yom Kippur, which is a one-day holiday, the gate shall be unlocked from one (1) hour before sunset on the day prior to Yom Kippur until 12:00 a.m. midnight, and from 4:00 a.m. until two (2) hours after sunset on Yom Kippur. The Jewish Holy Days for 2019 will take place on the dates listed below. Plaintiffs or their designee will provide an updated list of dates for the Jewish Holy Days each year.
- d. The gate shall be unlocked until 2:00 am on the night preceding the “First Days” of Pesach, and on the following evening.
- e. During daylight savings time, when many of the Plaintiffs begin the Sabbath early, the gate shall be unlocked at the earlier of 6:00 p.m. or (1) hour before sunset.

f. For clarification, the times for the access to the Damiano Way Pedestrian Gate are also set forth in Schedule A attached hereto.

<i>Yearly Jewish Holidays</i>	
Yearly Holidays	2019 Schedule
Rosh Hashonoh	Monday, September 30th and Tuesday, October 1st
Yom Kippur	Wednesday, October 9th
Sukkos	Monday, October 14th and Tuesday, October 15th
Shmeini Atzeres	Monday, October 21st and Tuesday October 22nd
Pesach - First Days	Saturday, April 20th and Sunday, April 21st
Pesach - Second Days	Friday, April 26th and Saturday, April 27th
Shavous	Sunday, June 9th and Monday June 10th - three day door opening because of preceding Saturday, June 8th

**All holidays are two days except Yom Kippur, which is one day.*

2. The Defendant, THE ENCLAVE AT THE FAIRWAYS HOMEOWNERS ASSOCIATION, INC., shall permanently cease and desist from taking any action against Orthodox Jewish homeowners for conducting prayer gatherings in their homes that are incidental to the principal residential use of such homes, and shall permit such prayer gatherings to occur as follows:

- a. These prayer gatherings shall be limited to no more than 30 individuals, inclusive of family members.
- b. The effective date of the restriction on the number of individuals set forth in Section 2(a) of this Consent Order shall be three months following entry of this Consent Order by the Court.
- c. The hosts and attendees of any such gatherings agree to abide by the parking rules of the Enclave, and to bear responsibility for any violation of parking rules or ordinances. Defendant agrees to enforce any parking rules in a nondiscriminatory manner.

3. Defendant, THE ENCLAVE AT THE FAIRWAYS HOMEOWNERS ASSOCIATION, INC., shall have the following guest policy for residents:

- a. All members of the Association may provide to the Defendant a standing list of authorized visitors/guests for their residence which the HOA shall distribute to the guardhouse. Guests entering on Jewish Holy Days or the Sabbath will not be required to obtain or show a “pass” or other type of paperwork or electronic proof of identity when entering the Enclave.
- b. Said standing list shall be perpetual and shall not have an expiration date.
- c. Said standing list may be amended at the discretion of the member and upon notice to the Defendant. Such changes will be in effect as soon as practicable, and no later than on the next business day they are requested. Members may also notify the guard house of the names of temporary/same day guests or visitors not on the list who may enter the Association as provided in paragraph 3(e) below and/or by

presenting themselves to the guard and providing the name and address of the resident they are visiting.

- d. Said standing list shall be limited to no more than forty (40) individuals per residence address.
- e. Individuals on said standing list or temporary/same day guests (who may or may not be on the list) may gain access to The Enclave at Fairways community during the Sabbath or Holy Days either by presenting themselves to the security booth at the Massachusetts Avenue gate to the community or by using the Damiano Way pedestrian gate, and do not need to be escorted thereafter while in the community, except that all guests must be escorted by a resident when using the following amenities: the clubhouse, swimming pools, tennis courts, bocce courts, horse shoe pits, or fishing the ponds.

4. The Defendant, THE ENCLAVE AT THE FAIRWAYS HOMEOWNERS ASSOCIATION, INC., shall waive and/or rescind any and all fines, attorney fees, and/or citations levied upon and/or issued to Plaintiff Rabbi David Slomovitz associated with the use of his real property at 244 Enclave Boulevard, Lakewood, New Jersey through the date of entry of this Consent Order.

5. The Defendant, THE ENCLAVE AT THE FAIRWAYS HOMEOWNERS ASSOCIATION, INC., shall restore the membership rights of Plaintiff Rabbi David Slomovitz in the Defendant upon entry of this Consent Order.

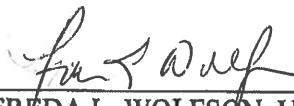
6. In the event that any member shall make application to the Defendant, THE ENCLAVE AT THE FAIRWAYS HOMEOWNERS ASSOCIATION, INC. for a permit for the construction of a Sukkah on real property owned or leased by them in The Enclave at Fairways

community, the permit issued shall be printed on white paper with black lettering and shall state "Exterior Modification Permit."

7. The Parties agree that the content of this Consent Order and any Settlement Agreement and Mutual Release shall be made available in their entirety to all members of the Association. Notice provided to the Members of the Association regarding the settlement will be limited to an HOA announcement that states that "the Federal and State actions have been settled and the approved Consent Order and any Settlement Agreement are available for review."

9. The Department of Civil Rights complaint brought against the defendants is also concluded with the execution of this agreement.

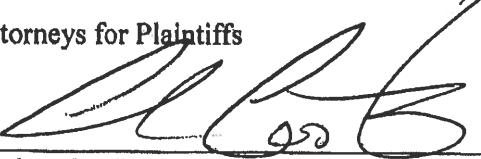
8. This Court shall retain jurisdiction to resolve any disputes arising out of this action and Consent Order.



Freida L. Wolfson
FREDA L. WOLFSON, U.S.D.J.

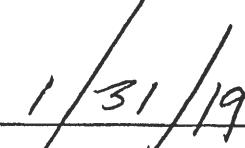
We hereby consent to the form and entry of the within Order:

Attorneys for Plaintiffs



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Dated:



1/31/19

Attorneys for Defendant



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Dated: 1/31/19

SCHEDULE A

Sabbath and Holiday Pedestrian Damiano Door Opening and Closing Times

Sabbath	Pedestrian Door Open	Pedestrian Door Close
Friday	One hour prior to sunset*	Midnight
Saturday	4:00am	Two hours after sunset

Yom Kippur

Day prior	One hour prior to sunset*	Midnight
Day of	4:00am	Two hours after sunset

Two day holiday

Day prior to onset	One hour prior to sunset*	Midnight
First day	4:00am	Midnight
Second day	4:00am	Two hours after sunset

Sabbath followed by two day Holiday

Friday	One hour prior to sunset*	Midnight
Saturday	4:00am	Midnight
Sunday (First day of holiday)	4:00am	Midnight
Monday (second and last day of holiday)	4:00am	Two hours after sunset

Two day holiday followed by Sabbath

Wednesday	One hour prior to sunset*	Midnight
Thursday (First day of holiday)	4:00am	Midnight
Friday (Second and last day of holiday)	4:00am	Midnight
Saturday (Sabbath)	4:00am	Two hours after sunset

First day of holiday on Sabbath

Friday	One hour prior to sunset*	Midnight
Saturday (Sabbath and first day of holiday)	4:00am	Midnight
Sunday (Second and last day of holiday)	4:00am	Two hours after sunset

First day of holiday on Sabbath

Pesach - First Days	4:00am	2:00a.m.
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* or 6:00pm during DST - Whichever is earlier